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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 MICHAEL D. CAREY,

12 Plaintiff,

13 v.

14 JEFF DIRKSE,

15 Defendant.
16

No. 2:24-CV-1900-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

19 The Court is required to screen complaints brought by prisoners seeking relief
20 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
21 § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was
22 initiated even if the litigant was subsequently released from custody. See Olivas v. Nevada ex rel.
23 Dep't of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or
24 portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can
25 be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See
26 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that
27 complaints contain a “. . . short and plain statement of the claim showing that the pleader is
28 entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply,

1 concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to
2 Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice
3 of the plaintiff's claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121,
4 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity
5 overt acts by specific defendants which support the claims, vague and conclusory allegations fail
6 to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening
7 required by law when the allegations are vague and conclusory.

8 Plaintiff names Jeff Dirkse, the Stanislaus County Sheriff-Coroner, as the only
9 defendant. See ECF No. 1, pgs. 1, 2. Plaintiff claims that the showers at the Stanislaus County
10 Jail are not being properly cleaned, resulting in violation of his right under the Eighth
11 Amendment to sanitary conditions of confinement. See ECF No. 3.

12 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual
13 connection or link between the actions of the named defendants and the alleged deprivations. See
14 Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A
15 person 'subjects' another to the deprivation of a constitutional right, within the meaning of
16 § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform
17 an act which he is legally required to do that causes the deprivation of which complaint is made."
18 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations
19 concerning the involvement of official personnel in civil rights violations are not sufficient. See
20 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth
21 specific facts as to each individual defendant's causal role in the alleged constitutional
22 deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

23 Supervisory personnel are generally not liable under § 1983 for the actions of their
24 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no
25 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional
26 violations of subordinates if the supervisor participated in or directed the violations. See id.
27 Supervisory personnel who implement a policy so deficient that the policy itself is a repudiation
28 of constitutional rights and the moving force behind a constitutional violation may be liable even

1 where such personnel do not overtly participate in the offensive act. See Redman v. Cnty of San
2 Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc). A supervisory defendant may also be
3 liable where he or she knew of constitutional violations but failed to act to prevent them. See
4 Taylor, 880 F.2d at 1045; see also Starr v. Baca, 633 F.3d 1191, 1209 (9th Cir. 2011).

5 When a defendant holds a supervisory position, the causal link between such
6 defendant and the claimed constitutional violation must be specifically alleged. See Fayle v.
7 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.
8 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in
9 civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
10 Cir. 1982). “[A] plaintiff must plead that each Government-official defendant, through the
11 official’s own individual actions, has violated the constitution.” See Ashcroft v. Iqbal, 556 U.S.
12 662, 676 (2009).

13 Here, while Plaintiff names Jeff Dirkse, the county sheriff and coroner, as the only
14 defendant, Plaintiff has not alleged any facts specific to this individual. Nor has Plaintiff alleged
15 the existence or implementation of a policy so deficient that it resulted in the unsanitary
16 conditions about which Plaintiff complains. To the contrary, Plaintiff outlines a policy requiring
17 that showers be regularly cleaned. Plaintiff has not explained how Defendant Dirkse is
18 responsible for an alleged failure to implement that policy.

19 Because it is possible that the deficiencies identified in this order may be cured by
20 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire
21 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
22 informed that, as a general rule, an amended complaint supersedes the original complaint. See
23 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
24 amend, all claims alleged in the original complaint which are not alleged in the amended
25 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
26 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make
27 Plaintiff’s amended complaint complete. See Local Rule 220. An amended complaint must be
28 complete in itself without reference to any prior pleading. See id.

1 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
2 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
3 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
4 each named defendant is involved and must set forth some affirmative link or connection between
5 each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167
6 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

7 Finally, Plaintiff is warned that failure to file an amended complaint within the
8 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
9 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
10 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
11 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's original complaint is dismissed with leave to amend; and
- 14 2. Plaintiff shall file a first amended complaint within 30 days of the date of
15 service of this order.

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17 **Dated: August 7, 2024**



18 DENNIS M. COTA
19 UNITED STATES MAGISTRATE JUDGE
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